

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

UNITED STATES OF AMERICA

VS.

BRENDA MARTINEZ §

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CASE NO. 1:09-CR-013-01

**MOTION FOR MODIFICATION OR REDUCTION OF SENTENCE PURSUANT TO 18
U.S.C. § 3582 (C) (2)**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant, BRENDA MARTINEZ through his counsel, hereby requests a modification or reduction of sentence pursuant to 18 U.S.C. § 3582 (C)(2) and Amendment 782 to the United States Sentencing Guidelines, which made a reduction in the base offense level for drug offenses retroactive as of November 1, 2014. In support of this motion, defendant states as follows:

I.

1 Defendant, BRENDA MARTINEZ is serving a term of one hundred and twenty (120) months. Defendant's sentence was imposed on November 19, 2009 by the Hon. Andrew S. Hanen.

2. Defendant, BRENDA MARTINEZ sentence was based on Title & Section 21 U.S.C. §§ 846, 841 (a)(1), and 841 (b)(1)(a), Conspiracy to Possess With Intent to Distribute a Quantity Exceeding Five (5) Kilograms of Cocaine, that is, 19.63 Kilograms, a Schedule II Controlled Substance Guidelines.

3. Ms. Martinez was sentenced in the Southern District of Texas on November 19, 2009 to a term of 120 months in imprisonment after pleading guilty to Conspiracy to Possess With Intent to Distribute a Quantity Exceeding Five (5) Kilograms of Cocaine, that is, 19.63 Kilograms, a Schedule II Controlled Substance. Ms. Martinez total Offense level was 34 and criminal history category was I.

II.

1. This court may modify a defendant's term of imprisonment once it has been imposed because the United States Sentencing Commission made an amendment to the Guidelines retroactive and the amended guideline was part of the basis of the defendant's guideline range.

2. On April 30, 2014 the United States Sentencing Commission submitted to Congress an amendment that was revised and approved by the Commission November 1, 2014. The amendment would reduce the sentencing of defendants who had already been sentenced to a term of imprisonment.

(a) The court may not modify a term of imprisonment once it has been imposed except that-

(b) When the Commission makes a guideline amendment retroactive, 12. U.S.C. § 3582 (C)(2) it authorizes the District Court to reduce upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in 18 U.S.C. § 3553 (C)(2) to the extent that they are applicable, if such a reduction is consistent with

applicable policy statements issued by the Sentencing Commission.

3. Defendant's Guideline range at the time of sentencing was level 34 guideline range of 151 to 188. However the court originally imposed a sentence of 120 months, pursuant to 18 U.S.C. § 3553(a) thus giving defendant a sentence of minus 31 months. Presently the resulting guideline range for imprisonment, pursuant to the "Drug Minus 2" Guideline Amendment, is 121 to 151 months. It is clear that it was the court intention to give the defendant 31 months less than the applicable range of punishment. Given that presently that low end is 121 months following the courts intention of giving 31 months less would give the defendant a sentence of 121 minus 31. Justice requires the defendants sentence be reduced to 90 months.

4. For the foregoing reasons, Ms. BRENDA MARTINEZ respectfully request the Court grant a resentencing in this case pursuant to 18 U.S.C. § 3582 (c)(2), and impose a sentence below the original sentence, specifically, a two point reduction from the original sentence guideline.

Respectfully submitted,

LAW OFFICE OF RICK CANALES
845 EAST HARRISON STREET, STE B
BROWNSVILLE, TEXAS 78520
PHONE (956) 546-7766
FAX (956) 546-6885

s/ Rick Canales

RICK CANALES
FEDERAL I.D. 20766
STATE BAR No. 00789198

ATTORNEY FOR DEFENDANT
BRENDA MARTINEZ

CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of March, 2016, a true and correct copy of the foregoing Motion to Accelerate, has been forwarded via electronic mail to Mrs. Ana Cecilia Cano, U.S. Attorney's Office, 600 E. Harrison Street, Brownsville, Texas 78520.

s/ Rick Canales

RICK CANALES